

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RIAN HELGASON and CAROLINE
CRAWFORD, individually and on
behalf of
All others similarly situated
under 29 U.S.C. §
216(b),

EXHIBIT

3

Plaintiffs,
VS.

PERRY'S RESTAURANTS LTD;
PERRY'S
LLC; PBS HOLDINGS, INC.; and
LEASING ENTERPRISES, LTD,
collectively
D/b/a Perry's Steakhouse and
Grille; and
CHRISTOPHER V. PERRY,
individually,

CASE NO. 3:20-cv-01573-S

Defendants.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
HEARD BEFORE THE HONORABLE KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

FEBRUARY 9, 2021

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced via computer.

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: This is Case Number 3:20-cv-01573-S,
Helgason, et al., versus Perrys Restaurant, Ltd., et al.

Counsel, please state your appearance. Let's
start with the plaintiffs.

MR. HERRMANN: Drew Herrmann, counsel for the
plaintiffs.

MS. HERRMANN: Pamela Herrmann, counsel for the
plaintiffs.

THE COURT: And on behalf of the defendants.

MR. SCHOOLER: Good morning, Your Honor. Lionel
Schooler of Jackson Walker for defendants. I'm accompanied by
Scott McElhaney and Brooke Willard of our firm.

THE COURT: Counsel, thank you for participating in
this initial hearing on this transfer to my court, which I
welcome. We went over several things, but I think the only
things that I need to put on the record are the following:

First, the scheduling order that Judge Brown
signed off before the transfer, ECF Number 16, with the
exception of the paragraph toward the end that talks
administratively about where to send e-mails to, it's my
understanding that counsel agrees that this schedule --
scheduling order is appropriate and there's nothing further on
this initial phase of this FLSA action that needs to be done

1 with respect to the scheduling order.

2 Am I right, Mr. Herrmann?

3 MR. HERRMANN: That's right, Your Honor.

4 THE COURT: Mr. Schooler?

5 MR. SCHOOLER: Yes, Your Honor.

6 THE COURT: Okay. And then what's next on the plate is
7 the parties -- the plaintiffs has filed a motion for
8 conditional certification and notice under Section 216(b) that
9 was filed as ECF Number 17. This has been, from what I could
10 see from the pleadings, extensively briefed by both sides.
11 However, all of the parties are aware within a month ago, the
12 Fifth Circuit issued its opinion in *Swales v. KLLM Transport*
13 *Services* which changed the landscape in FLSA actions in which
14 it explicitly reject the Lusardi approach, and the Lusardi
15 approach was applied in the party's initial briefing in the
16 motion for conditional certification.

17 Swales does direct the district court to employ a
18 more rigorous fact intensive inquiry into whether potential
19 members of the action are similarly situated before issuance of
20 notice and collective treatment. Moreover, Swales requires the
21 district court to consider all available evidence when
22 determining whether and to whom notice should be issued.

23 The Court does acknowledge, with thanks, that the
24 parties filed supplemental briefing in light of Swales, which
25 include the defendants' supplement to opposition, filed as ECF

1 Number 33, and plaintiffs' supplemental reply, filed as
2 ECF Number 36. But given the substantial shift in the legal
3 standard that covers who should and not should receive notice
4 in participating in a collective action, the Court finds that
5 the more targeted briefing, in light of Swales and its impact,
6 on specific circumstances of this case is necessary.

7 Accordingly, the Court exercise its discretion
8 provided by law under the Fifth Circuit to deny -- because of
9 Swales in changing the landscape -- plaintiffs' motion for
10 conditional certification and notice under Section 21 -- 216(b)
11 without prejudice to re-filing a motion that now takes up this
12 change in landscape, as I've described, and afford both parties
13 the opportunity, in light of Swales, if necessary, to conduct
14 additional discovery.

15 But, again, I'm not reaching the discovery issue,
16 but I do want to state that that is something that Swales
17 addresses, and we anticipate that you will be addressing in
18 your new motion for conditional certification.

19 So, again, it's without prejudice to re-file.
20 The Court looks forward to that. And please understand that I
21 expect this new motion for conditional certification to be
22 standalone as well as responses, et cetera, thereto. In the
23 event there are attachments -- I don't want you referring back
24 to prior motions or prior responses or supplemental responses
25 or reply. It needs to be standalone. It will be cleaner for

1 the record for this Court and any reviewing court in the
2 future.

3 Any questions about that, Mr. Herrmann?

4 MR. HERRMANN: None, Your Honor.

5 THE COURT: Okay. Mr. Schooler?

6 MR. SCHOOLER: The only question I have, Your Honor, is
7 a timetable for us to respond once we get Mr. Herrmann's new
8 motion.

9 THE COURT: It'll be the same as if it's a brand-new
10 motion. So it'll be under the rules.

11 MR. SCHOOLER: Very good.

12 THE COURT: So it's not truncated at all because it's a
13 redo of your supplement because -- given -- and you can pull
14 the record on this, too. I deliberately articulated my view of
15 Swales at this initial stage and what I expect the parties to
16 address, and I have no idea whether it's sufficiently addressed
17 in the supplemental version.

18 So, no, everybody's going to get the appropriate
19 timetable under the rules for a response as well as a reply.
20 And if a sur-reply is necessary, you just ask for leave of
21 Court. And -- I can't think of anytime that I have denied a
22 sur-reply. I might truncate that, but, you know...

23 Any other questions, Mr. Schooler?

24 MR. SCHOOLER: Yes, Your Honor. I'm looking at
25 Docket Number 16, which was Judge Brown's original scheduling

1 order. She did set up a timetable where once the plaintiffs
2 had filed a motion, we had 28 days to respond, and then they
3 had 14 days after that to reply. I think that was --

4 THE COURT: What do you want?

5 MR. SCHOOLER: Given the breadth, Your Honor, we prefer
6 the 28 days, if possible.

7 THE COURT: And -- in other words, the same order as
8 set forth in ECF Number 16?

9 MR. SCHOOLER: Yes, Your Honor, that's correct.

10 THE COURT: Okay. Mr. Herrmann, 28 days and you get
11 14 days?

12 MR. HERRMANN: Your Honor, yes, that's -- that's
13 appropriate.

14 THE COURT: Do you want more than 14 days? 'Cause I
15 sure can give it to you.

16 MR. HERRMANN: No. We -- again, 'cause of the ruling
17 of statute of limitations, we're going to get moving.

18 THE COURT: All right. So while we're on the record --
19 and I will probably memorialize this in an order, an electronic
20 order. Once plaintiffs files a motion for notice of
21 conditional certification -- and then I'm going to leave it up
22 to you. I'm not going to say you must do it within a certain
23 time period, Mr. Herrmann. Once that is done -- and I know
24 you'll expedite it. That's why I don't have to tell you -- the
25 defendants shall respond in 28 days and the plaintiffs shall

1 reply to the response within 14 days.

2 Any objection to that, Mr. Herrmann?

3 MR. HERRMANN: None, Your Honor.

4 THE COURT: Mr. Schooler?

5 MR. SCHOOLER: None, Your Honor. Thank you.

6 THE COURT: They were good questions. Any others,
7 Mr. Schooler?

8 MR. SCHOOLER: No, Your Honor, not at this time.

9 THE COURT: Okay. With no further questions or
10 comments that are needed on the record, we are adjourned from
11 the record.

12 (WHEREUPON, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

I, Thu Bui, CRR, RMR, Official Court Reporter,
United States District Court, Northern District of Texas, do
hereby certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of the proceedings in the above-entitled and
numbered matter.

/s/ Thu Bui
Official Court Reporter